

REMARKS

The Office Action mailed on May 13, 2008 has been reviewed and the comments of the Examiner carefully considered. Claims 1, 5-13, and 20 are pending. Claims 1 and 13 have been amended. Support for these amendments may be found in the specification at, for example, page 4, lines 1-15. No new matter has been added by way of these amendments.

Rejections under 35 U.S.C. § 112

Claim 13 currently stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention because of the inclusion of the phrase “at least about”. Applicants respectfully disagree. However, in the interest of furthering prosecution and without any admission as to the propriety of the rejection, applicants have herein amended claim 13 by deleting the word “about”. Applicants respectfully submit that as claim 13 has been amended, the rejection under 35 U.S.C. § 112 is now moot. Applicants respectfully request withdrawal of this rejection and submit that claim 13 is now in condition for allowance.

Double Patenting Rejections

- Claims 1 and 12 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims of co-pending US Patent Appln. No. 11/608,553 in view of Partain et al. (EP 0368253).**

Applicants respectfully disagree. Applicants respectfully submit that, as the instant application and US Patent Appln. No. 11/608,553 are not commonly owned, the provisional rejections of claims 1 and 12 on the ground of nonstatutory obviousness-type double patenting is improper.

Further, applicants respectfully submit that, as amended, the claims of the instant application recite a wound dressing material comprising oxidized cellulose dyed with an antioxidant dyestuff, “wherein the antioxidant dyestuff is an antimicrobial, and wherein the antioxidant dyestuff is bound to the surface of the solid bioabsorbable substrate and allows sustained release of effective amounts of the antimicrobial”. As neither US Patent Appln. No. 11/608,553 nor Partain et al. teaches a wound dressing material comprising oxidized cellulose

VIA ELECTRONIC FILING

dyed with an antioxidant dyestuff, applicants respectfully request withdrawal of this rejection and submit that claims 1 and 12 are now in condition for allowance.

- 2. Claims 8-10 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims of co-pending US Patent Appln. No. 10/579,850 in view of Partain et al. (EP 0368253).**

Applicants herein enclose a Terminal Disclaimer for the assignee, executed by the attorney of record, to obviate the Double Patenting Rejection under 37 C.F.R. § 1.321(c) for co-pending US Patent Appln. No. 10/579,850. Applicants therefore respectfully request allowance of claims 8-10.

- 3. Claims 8-10 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims of co-pending US Patent Appln. No. 10/527,421 in view of Partain et al. (EP 0368253).**

Applicants respectfully disagree. Applicants respectfully submit that, as the instant application and US Patent Appln. No. 10/528,262 are not commonly owned, the provisional rejections of claims 8-10 on the ground of nonstatutory obviousness-type double patenting is improper.

Further, applicants respectfully submit that, as amended, the claims of the instant application recite a wound dressing material comprising oxidized cellulose dyed with an antioxidant dyestuff, “wherein the antioxidant dyestuff is an antimicrobial, and wherein the antioxidant dyestuff is bound to the surface of the solid bioabsorbable substrate and allows sustained release of effective amounts of the antimicrobial”. As neither US Patent Appln. No. 10/527,421 nor Partain et al. teaches a wound dressing material comprising oxidized cellulose dyed with an antioxidant dyestuff, applicants respectfully request withdrawal of this rejection and submit that claims 8-10 are now in condition for allowance.

- 4. Claims 1 and 12 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims of co-pending US Patent Appln. No. 10/528,262 in view of Partain et al. (EP 0368253).**

Applicants herein enclose a Terminal Disclaimer for the assignee, executed by the attorney of record, to obviate the Double Patenting Rejection under 37 C.F.R. § 1.321(c) for co-

pending US Patent Appln. No. 10/528,262. Applicants therefore respectfully request allowance of claims 1 and 12.

Rejections under 35 U.S.C. § 103

- 1. Claims 1 and 4-6 currently stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Partain et al. in view of Rosenthal et al. (US 5,565,210).**

Applicants respectfully disagree.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all claim limitations. MPEP § 2143. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, and not based on the applicant's disclosure. MPEP § 2143; *In re Vaeck*, 947 F.2d 488, 493 (Fed. Cir. 1991).

Regarding independent claim 1, applicants respectfully submit that the combination of Partain et al. and Rosenthal et al. does not teach, suggest, or otherwise disclose:

“A wound dressing material comprising a solid bioabsorbable substrate dyed with an antioxidant dyestuff, wherein the solid bioabsorbable substrate comprises oxidized cellulose and is selected from the group consisting of woven fabrics, nonwoven fabrics, freeze-dried sponges, solvent-dried sponges and combinations thereof, wherein the antioxidant dyestuff is an antimicrobial, and wherein the antioxidant dyestuff is bound to the surface of the solid bioabsorbable substrate and allows sustained release of effective amounts of the antimicrobial” (emphasis added).

Partain et al. discloses film-forming delivery systems that can contain antiseptic agents such as acridine dyes. As the Examiner noted, Partain et al. does not disclose the use of oxidized cellulose, much less the use of oxidized cellulose dyed with an antioxidant dyestuff, wherein the antioxidant dyestuff is an antimicrobial, and wherein the antioxidant dyestuff is bound to the surface of the solid bioabsorbable substrate and allows sustained release of effective amounts of the antimicrobial. Rosenthal et al. does not cure this deficiency. Rosenthal et al. discloses

VIA ELECTRONIC FILING

heteromorphic sponges that may be formed from polysaccharides such as oxidized regenerated cellulose.

As neither Partains et al. nor Rosenthal et al. discloses a wound dressing material comprising oxidized cellulose dyed with an antioxidant dyestuff wherein the antioxidant dyestuff is an antimicrobial, and wherein the antioxidant dyestuff is bound to the surface of the solid bioabsorbable substrate and allows sustained release of effective amounts of the antimicrobial, the combination does not suggest, much less teach, the present invention. Consequently, applicants respectfully request withdrawal of the rejection of claim 1 under 35 U.S.C. § 103(a). Further, applicants submit that claims 4-6 are thereby allowable as written as depending from an allowable independent claim.

2. Claims 1, 7 and 13 currently stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Partain et al., in view of Rosenthal et al., and further in view of Fowler et al (US 5,667,501).

Applicants respectfully traverse this basis for rejection and request reconsideration and withdrawal thereof. Fowler et al. discloses wound dressing comprises a chemically modified polymer which has a free radical activity in the DPPH Test in the range 15-80 percent. Fowler et al. does not disclose a wound dressing material comprising oxidized cellulose dyed with an antioxidant dyestuff wherein the antioxidant dyestuff is an antimicrobial, and wherein the antioxidant dyestuff is bound to the surface of the solid bioabsorbable substrate and allows sustained release of effective amounts of the antimicrobial. Thus, as Fowler et al. cannot cure the deficiencies of Partain et al., in view of Rosenthal et al., as discussed above, applicants respectfully request withdrawal of the rejection of claim 1 under 35 U.S.C. § 103(a). Further, applicants submit that claims 7 and 13 are thereby allowable as written as depending from an allowable independent claim.

3. Claims 1 and 7-10 currently stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Partain et al., in view of Rosenthal et al. and Fowler et al., and further in view of Nimrod et al (WO 87/05517).

Applicants respectfully traverse this basis for rejection and request reconsideration and withdrawal thereof. Nimrod et al. discloses heavy metal salts of hyaluronic acid, an anionic polymer where the heavy metal can be silver. Nimrod et al. does not disclose a wound dressing

material comprising oxidized cellulose dyed with an antioxidant dyestuff wherein the antioxidant dyestuff is an antimicrobial, and wherein the antioxidant dyestuff is bound to the surface of the solid bioabsorbable substrate and allows sustained release of effective amounts of the antimicrobial. Thus, as Nimrod et al. cannot cure the deficiencies of Partain et al., in view of Rosenthal et al. and Fowler et al., as discussed above, applicants respectfully request withdrawal of the rejection of claim 1 under 35 U.S.C. § 103(a). Further, applicants submit that claims 7-10 are thereby allowable as written as depending from an allowable independent claim.

4. Claims 1, 6, 7, 11 and 12 currently stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Partain et al., in view of Rosenthal et al. and Fowler et al., and further in view of Gibbins (US 6,355,858).

Applicants respectfully traverse this basis for rejection and request reconsideration and withdrawal thereof. Gibbins discloses methods and compositions for wound dressing devices comprising a matrix comprising a polymer network and a non-gellable polysaccharide having active agents, such as wound healing agents, incorporated therein. Gibbins does not disclose a wound dressing material comprising oxidized cellulose dyed with an antioxidant dyestuff wherein the antioxidant dyestuff is an antimicrobial, and wherein the antioxidant dyestuff is bound to the surface of the solid bioabsorbable substrate and allows sustained release of effective amounts of the antimicrobial. Thus, as Gibbins cannot cure the deficiencies of Partain et al., in view of Rosenthal et al. and Fowler et al., as discussed above, applicants respectfully request withdrawal of the rejection of claim 1 under 35 U.S.C. § 103(a). Further, applicants submit that claims 6, 7, 11 and 12 are thereby allowable as written as depending from an allowable independent claim.

Conclusion

Applicants respectfully submit that the claims are in condition for allowance. An early Notice of Allowance is therefore earnestly solicited. Applicants invite the Examiner to contact the undersigned at (215) 963-5337 to clarify any unresolved issues raised by this response.

The Director is hereby authorized to charge/credit Deposit Account No. **50-0310** (Billing No. 101713-5033) for any other required fees, deficiencies or overpayments in connection with this Response.

Respectfully submitted,

BREDA M. CULLEN ET AL.

Date: April 1, 2009

By: /Christopher I. Halliday/
Christopher I. Halliday
Registration No. **42,621**

MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921
Telephone: (215) 963-5337
Facsimile: (215) 963-5001
E-Mail: challiday@morganlewis.com